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S.B. No. 1176

A BILL TO BE ENTITLED

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AN ACT

relating to the regulation of roofing contractors; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 7, Occupations Code, is amended by adding Subtitle D to read as follows:

SUBTITLE D. REGULATION OF CONSTRUCTION OF HOUSING AND BUILDINGS

CHAPTER 1251. ROOFING CONTRACTORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1251.001. DEFINITIONS. In this chapter:

(1) "Advisory board" means the Roofing Contractors Advisory Board.

(2) "Commercial roofing" means the exterior roof, cover, or skin of the roof assembly consisting of membrane, metal panels, sheets, shingles, tiles, slate, or other materials on any building or structure other than residential buildings or structures.

(3) "Commission" means the Texas Commission of Licensing and Regulation.

(4) "Department" means the Texas Department of Licensing and Regulation.

(5) "Executive director" means the executive director of the department.

(6) "Qualifying party" means an individual who

1 possesses all the necessary qualifications for a license and who is
2 a principal of a business entity licensed under this chapter.

3 (7) "Residential roofing" means any material applied
4 to the exterior roof framing, whether of wood or steel, on a
5 single-family home, duplex, triplex, or fourplex.

6 (8) "Roofing contracting" means performing or
7 offering to perform the installation, construction, maintenance,
8 service, repair, alteration, or modification of a roofing product
9 or equipment in roofs.

10 Sec. 1251.002. EXEMPTIONS. (a) This chapter does not
11 apply to a person:

12 (1) while the person performs roofing contracting:

13 (A) on new residential construction of a
14 single-family home, duplex, triplex, or fourplex;

15 (B) under the direct supervision of an individual
16 license holder;

17 (C) on property owned by the person and used as
18 the person's residence;

19 (D) on a dwelling owned by a member of the
20 person's family;

21 (E) on property that is primarily for
22 agricultural use; or

23 (F) on property that is a portable building or a
24 garage that is not connected to a dwelling;

25 (2) who is registered and regulated as a manufacturer,
26 retailer, or installer under Chapter 1201 while the person performs
27 roofing contracting in the building or installation of manufactured

1 homes or in providing retailer or manufacturer warranty services
2 free of charge to the consumer;

3 (3) who is a maintenance engineer while the person
4 performs roofing contracting as an employee of the property owner,
5 the property lessee, or the management company managing the
6 property where the roofing contracting is being performed;

7 (4) that qualifies for an exemption from federal
8 income taxation under Section 501(a) of the Internal Revenue Code
9 of 1986 by being listed as an exempt organization in Section
10 501(c)(3) of that code; or

11 (5) who collects less than \$150,000 in profits per
12 year from commercial or residential roofing as determined by the
13 department.

14 (b) This chapter does not restrict the practice of
15 architecture or engineering by a person licensed in this state to
16 practice that profession.

17 [Sections 1251.003-1251.050 reserved for expansion]

18 SUBCHAPTER B. DEPARTMENT POWERS AND DUTIES

19 Sec. 1251.051. ADMINISTRATION; ENFORCEMENT; FEES. (a) The
20 department shall administer this chapter.

21 (b) The department may contract with another state agency or
22 with a political subdivision of the state for the enforcement of
23 this chapter and the rules adopted and orders issued under this
24 chapter.

25 (c) The commission may set fees in amounts reasonable and
26 necessary to recover the costs of administering this chapter,
27 including fees for administration of continuing education courses,

1 examinations, and issuance of licenses, including renewals and
2 temporary licenses.

3 (d) The total fees charged to a license holder under this
4 section may not exceed \$200 per year.

5 Sec. 1251.052. RULES; STANDARDS. (a) The department may
6 adopt rules to enforce this chapter.

7 (b) The department shall adopt rules for the practice of
8 roofing contracting consistent with this chapter. The standards
9 prescribed by rule must be substantially the same as the standards
10 set forth in the roofing manufacturers' standard requirements.

11 Sec. 1251.053. FORMS. The department shall prescribe
12 application forms for original and renewal licenses and shall
13 design the licenses.

14 Sec. 1251.054. ON-LINE DIRECTORY. (a) The department
15 shall make available on-line a directory of persons licensed under
16 this chapter.

17 (b) The department may not charge for access to the on-line
18 directory.

19 Sec. 1251.055. CONSUMER COMPLAINT INVESTIGATION. (a) The
20 department shall investigate consumer complaints filed with the
21 department. If the department determines after investigation that
22 a license holder has violated this chapter or a rule adopted under
23 this chapter, the department may take appropriate action under
24 Subchapter F.

25 (b) The department shall maintain a file on each written
26 complaint filed with the department. The file must include:

27 (1) the name of the person who filed the complaint;

1 (2) the date the complaint is received by the
2 department;

3 (3) the subject matter of the complaint;

4 (4) the name of each person contacted in relation to
5 the complaint;

6 (5) a summary of the results of the review or
7 investigation of the complaint; and

8 (6) an explanation of the reason the file was closed,
9 if the department closed the file without taking action other than
10 to investigate the complaint.

11 (c) The department shall provide to the person filing the
12 complaint and to each person who is a subject of the complaint a
13 written summary of the department's policies and procedures
14 relating to complaint investigation and resolution. The department
15 shall make the summary available on the department's Internet site.

16 (d) The department, at least quarterly until final
17 disposition of the complaint, shall notify the person filing the
18 complaint and each person who is a subject of the complaint of the
19 status of the investigation unless the notice would jeopardize an
20 undercover investigation.

21 [Sections 1251.056-1251.100 reserved for expansion]

22 SUBCHAPTER C. ADVISORY BOARD

23 Sec. 1251.101. ADVISORY BOARD. (a) The Roofing
24 Contractors Advisory Board is created to advise the department in:

25 (1) adopting rules;

26 (2) enforcing and administering this chapter; and

27 (3) determining the content of examinations.

1 (b) The advisory board shall advise the commission in
2 setting fees.

3 Sec. 1251.102. COMPOSITION. (a) The advisory board is
4 composed of six members appointed by the presiding officer of the
5 commission, with the commission's approval.

6 (b) The executive director or the executive director's
7 designee shall serve as an ex officio, nonvoting member of the
8 advisory board.

9 Sec. 1251.103. APPOINTMENT. (a) The presiding officer of
10 the commission shall appoint the advisory board members as follows:

11 (1) three members must be full-time licensed roofing
12 contractors with at least 10 years' experience in roofing
13 contracting and must hold the following licenses:

14 (A) one member must hold a commercial license;

15 (B) one member must hold a residential license;

16 and

17 (C) one member must hold a commercial and a
18 residential license; and

19 (2) three members must be public representatives.

20 (b) One member appointed under Subsection (a)(1) must be
21 from a historically underutilized business.

22 Sec. 1251.104. TERM. Members of the advisory board hold
23 office for staggered terms of six years, with two terms expiring on
24 February 1 of each odd-numbered year.

25 Sec. 1251.105. PRESIDING OFFICER. The presiding officer of
26 the commission, with the commission's approval, shall designate a
27 member of the advisory board to serve as presiding officer of the

1 advisory board.

2 Sec. 1251.106. VACANCIES. If a vacancy occurs on the
3 advisory board, the presiding officer of the commission, with the
4 commission's approval, shall appoint a member who represents the
5 same interests as the former member to serve the unexpired term.

6 Sec. 1251.107. MEETINGS. The advisory board shall meet at
7 least once every six months and may meet at other times at the call
8 of the presiding officer of the commission.

9 Sec. 1251.108. VOTES. A decision of the advisory board is
10 not effective unless it receives the affirmative vote of at least a
11 majority of the members present.

12 Sec. 1251.109. COMPENSATION NOT ALLOWED. An advisory board
13 member serves without compensation.

14 [Sections 1251.110-1251.150 reserved for expansion]

15 SUBCHAPTER D. LICENSE REQUIREMENTS

16 Sec. 1251.151. LICENSE REQUIRED; CITATION. (a) Unless
17 exempted under Section 1251.002, a person may not perform roofing
18 contracting without a license issued under this chapter.

19 (b) A business entity that holds a license must have at
20 least one qualifying party.

21 (c) The license holder and the license holder's qualifying
22 party shall comply with the requirements of this chapter.

23 (d) The commission or a municipal official may issue a
24 citation to a person who performs roofing contracting without a
25 license issued under this chapter.

26 Sec. 1251.152. SCOPE OF LICENSE. A license is valid
27 throughout this state, and the license holder is not required to

1 hold a municipal license or certificate to practice roofing
2 contracting in any municipality in this state.

3 Sec. 1251.153. ROOFING CONTRACTOR LICENSE CLASSES. Roofing
4 contractor licenses are as follows:

5 (1) a Class I license entitles the license holder to
6 perform commercial and residential roofing services;

7 (2) a Class II license entitles the license holder to
8 perform only commercial roofing services; and

9 (3) a Class III license entitles the license holder to
10 perform only residential roofing services.

11 Sec. 1251.154. APPLICATION; ELIGIBILITY. (a) A license
12 application must be made on a form prescribed by the department and
13 must specify the class of license the applicant seeks.

14 (b) To be eligible for a license, the qualifying party must
15 be at least 18 years old and must present to the department
16 satisfactory evidence of at least three years of practical
17 experience in roofing contracting in the previous five years.

18 (c) The qualifying party's application must be accompanied
19 by:

20 (1) a statement of the applicant's practical
21 experience;

22 (2) evidence of the insurance coverage required under
23 this chapter;

24 (3) the application fee; and

25 (4) the examination fee.

26 Sec. 1251.155. EXAMINATIONS. (a) The department shall
27 prescribe the method and content of examinations administered under

1 this chapter and shall set compliance requirements for the
2 examinations. The examination shall be offered at least quarterly
3 at various locations around the state as determined by the
4 department.

5 (b) The department shall prescribe separate examinations
6 for each class of license. For a Class I license, the department
7 shall prescribe separate examinations for commercial and
8 residential services.

9 (c) The qualifying party must pass the examination before a
10 license may be issued.

11 (d) The qualifying party may retake the examination.

12 Sec. 1251.156. ISSUANCE; TERM. (a) The department shall
13 issue a license to a person who qualifies for a license under this
14 chapter.

15 (b) A license is valid for one year from the date of
16 issuance.

17 Sec. 1251.157. RENEWAL; CONTINUING EDUCATION. (a) To
18 renew a license, a qualifying party of the license holder must:

19 (1) complete eight hours of continuing education
20 annually; and

21 (2) provide proof of maintenance of the insurance
22 required by this chapter.

23 (b) The department shall recognize, prepare, or administer
24 a continuing education program for the qualifying parties of
25 license holders. The department may recognize a course offered by a
26 trade association or other providers.

27 Sec. 1251.158. CONTRACT FORMS. (a) The department shall

1 prescribe two forms for use in roofing contracts:

2 (1) one form that discloses that the license holder
3 does not maintain general liability insurance coverage for work
4 performed under this chapter; and

5 (2) one form that discloses that the license holder
6 does maintain general liability insurance coverage for work
7 performed under this chapter.

8 (b) Each form must contain other appropriate contractual
9 information as determined by the department.

10 (c) Before commencing roofing contracting work, the license
11 holder must execute a contract with the customer on the appropriate
12 form.

13 Sec. 1251.159. USE, DISPLAY, AND ADVERTISEMENT OF LICENSE;
14 RULES. With the advice of the advisory board, the department shall
15 adopt rules relating to the use, display, and advertisement of a
16 license issued under this chapter.

17 Sec. 1251.160. DISPOSAL OF ROOFING MATERIALS; RULES. The
18 department shall adopt rules that require a license holder to
19 obtain a permit from an approved landfill to dispose of roofing
20 materials. The rules must include a requirement that a license
21 holder maintain a record for each disposal of roofing materials by
22 the license holder.

23 Sec. 1251.161. RECIPROCITY. The department may waive any
24 prerequisite, except an insurance requirement, to obtaining a
25 license for an applicant who holds a license issued by another
26 jurisdiction with which this state has a reciprocity agreement.
27 The commission may make an agreement, subject to the approval of the

1 governor, with another state to allow for licensing by reciprocity.

2 Sec. 1251.162. TEMPORARY LICENSE. (a) The department may
3 issue a temporary license to a license holder for a principal of a
4 license holder to serve as that license holder's qualifying party
5 if the original qualifying party for the license holder:

6 (1) becomes incapacitated and unable to serve in the
7 normal capacity of principal of the license holder; or

8 (2) is no longer available due to the dissolution of a
9 partnership, corporation, or other legal entity.

10 (b) The applicant for the temporary license shall apply to
11 the department on a form prescribed by the department and pay the
12 required fee.

13 (c) The temporary license is valid for 60 days beyond the
14 date of the next examination or six months, whichever is less. The
15 temporary license must be of the same class as the license being
16 replaced.

17 [Sections 1251.163-1251.200 reserved for expansion]

18 SUBCHAPTER E. PROHIBITED ACTIVITIES

19 Sec. 1251.201. PROPER ROOFING INSTALLATION REQUIRED.

20 (a) In this section, "mechanical integrity" means physical
21 installation of products, systems, or equipment in accordance with
22 their intended purpose and according to industry standards at least
23 as strict as the roofing manufacturers' specifications.

24 (b) The failure to provide proper installation consistent
25 with the manufacturer's specifications or consistent with commonly
26 accepted roofing practices, proper service, and mechanical
27 integrity under this chapter violates this chapter.

1 Sec. 1251.202. MISREPRESENTATION OF ROOFING CONTRACTING
2 SERVICES. An intentional or knowing misrepresentation of a
3 necessary roofing contracting service, roofing contracting service
4 to be provided, or a roofing contracting service that has been
5 provided, violates this chapter.

6 Sec. 1251.203. CERTAIN ADVERTISING PROHIBITED. A person
7 may not advertise to the public that the person is engaged in the
8 business of roofing contracting unless the person holds a license
9 issued under this chapter.

10 [Sections 1251.204-1251.250 reserved for expansion]

11 SUBCHAPTER F. PENALTIES AND ENFORCEMENT

12 Sec. 1251.251. DENIAL, SUSPENSION, OR REVOCATION OF
13 CERTIFICATE. (a) A violation of this chapter, a rule adopted
14 under this chapter, or an order issued under this chapter is a
15 ground for the denial, suspension, or revocation of a license and a
16 ground for the imposition of an administrative penalty under
17 Subchapter F, Chapter 51.

18 (b) The department may place on probation a person whose
19 license is suspended. If a license suspension is probated, the
20 department may require the person to:

21 (1) report regularly to the department on matters that
22 are the basis of the probation;

23 (2) limit practice to the areas prescribed by the
24 department; or

25 (3) continue or review professional education until
26 the person or the person's qualifying party attains a degree of
27 skill satisfactory to the department in those areas that are the

1 basis of the probation.

2 Sec. 1251.252. EMERGENCY ORDERS. (a) The department may
3 issue an emergency order as necessary to enforce this chapter if the
4 department determines that an emergency exists or formerly existed
5 requiring immediate temporary action to protect the public health
6 and safety. The order may be issued without notice and hearing or
7 with notice and hearing as the department considers practicable
8 under the circumstances.

9 (b) If an emergency order is issued under this section
10 without a hearing, the department shall set the time and place for a
11 hearing to affirm, modify, or set aside the emergency order.

12 Sec. 1251.253. CEASE AND DESIST ORDERS. The department may
13 issue a cease and desist order regarding a violation of this
14 chapter.

15 Sec. 1251.254. MUNICIPAL REGULATION. (a) A municipality
16 may by ordinance adopt and enforce standards for roofing
17 contractors that are consistent with the standards established
18 under this chapter.

19 (b) A municipality may not impose a license or registration
20 fee on a roofing contractor licensed under this chapter.

21 (c) The municipality may report a violation of this chapter
22 to the commission. If the municipality elects to report the
23 violation, it shall do so not later than the 10th day after the date
24 on which it discovers the violation.

25 (d) Conviction of an offense under the municipal ordinance
26 is a ground for the denial, suspension, or revocation of a license
27 under Section 1251.251.

1 Sec. 1251.255. ENFORCEMENT OF CONTRACTS. (a) A person who
2 performs roofing contracting without holding the appropriate
3 license may not collect a fee or otherwise enforce a contract for
4 the roofing service performed. To enforce a contract for the
5 performance of roofing contracting, the person performing the
6 service must present proof that the person held a license at the
7 time the contract was signed and the work was performed.

8 (b) The department director shall adopt rules relating to
9 the manner in which proof may be presented under this section.

10 SECTION 2. (a) The Texas Department of Licensing and
11 Regulation shall issue a roofing contractor license under
12 Subchapter D, Chapter 1251, Occupations Code, as added by this Act,
13 without an examination for the qualifying party if the qualifying
14 party:

15 (1) provides proof satisfactory to the department, on
16 or before September 1, 2004, that the qualifying party:

17 (A) has been engaged in the business of roofing
18 contracting during the five years preceding the date of the license
19 application; or

20 (B) is, as of the date of the application, a
21 certified roofing contractor in good standing as tested and
22 approved by a roofing trade association recognized by the
23 department, as shown by a copy of the contractor's certification
24 attested to by the trade association;

25 (2) applies to the executive director of the Texas
26 Department of Licensing and Regulation not later than July 31,
27 2004; and

1 (3) pays the required fee.

2 (b) A person who is issued a license under this section and
3 the qualifying party for that license holder are subject to all
4 other provisions of Chapter 1251, Occupations Code, as added by
5 this Act, including provisions for the renewal of the roofing
6 contractor license.

7 SECTION 3. In making the initial appointments to the
8 Roofing Contractors Advisory Board, the presiding officer of the
9 Texas Commission of Licensing and Regulation, with the approval of
10 the commission, shall designate two members for terms expiring on
11 February 1, 2005, two members for terms expiring on February 1,
12 2007, and two members for terms expiring on February 1, 2009. An
13 initial board member appointed under Subdivision (1), Subsection
14 (a), Section 1251.103, Occupations Code, as added by this Act, is
15 not required to hold a license until September 1, 2004, but must be
16 eligible to hold a license under Chapter 1251, Occupations Code, as
17 added by this Act, as of the time of the initial appointment.

18 SECTION 4. (a) Except as provided by Subsection (b) of
19 this section, this Act takes effect September 1, 2003.

20 (b) Section 1251.151 and Subchapters E and F, Chapter 1251,
21 Occupations Code, as added by this Act, take effect September 1,
22 2004.